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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 2013 - 375

13 **ERICH UNDERHILL**

**STATEMENT OF ISSUES**

14 **Registered Nurse License Applicant**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. The Board of Registered Nursing, Department of Consumer Affairs received an  
23 application for a Registered Nurse License from Erich Underhill (Respondent). On or about June  
24 19, 2012, Erich Underhill certified under penalty of perjury to the truthfulness of all statements,  
25 answers, and representations in the application. The Board denied the application on August 8,  
26 2012.

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1 granting probation is made suspending the imposition of sentence, irrespective of a  
2 subsequent order under the provisions of Section 1203.4 of the Penal Code.

3 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
4 substantially benefit himself or herself or another, or substantially injure another.

5 (3) (A) Done any act that if done by a licentiate of the business or profession  
6 in question, would be grounds for suspension or revocation of license.

7 (B) The board may deny a license pursuant to this subdivision only if the  
8 crime or act is substantially related to the qualifications, functions, or duties of the  
9 business or profession for which application is made.

10 (b) Notwithstanding any other provision of this code, no person shall be  
11 denied a license solely on the basis that he or she has been convicted of a felony if  
12 he or she has obtained a certificate of rehabilitation under Chapter 3.5  
(commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that  
13 he or she has been convicted of a misdemeanor if he or she has met all applicable  
14 requirements of the criteria of rehabilitation developed by the board to evaluate the  
15 rehabilitation of a person when considering the denial of a license under  
16 subdivision (a) of Section 482.

17 (c) A board may deny a license regulated by this code on the ground that the  
18 applicant knowingly made a false statement of fact required to be revealed in the  
19 application for the license.

20 7. Section 482 of the Code states:

21 Each board under the provisions of this code shall develop criteria to evaluate  
22 the rehabilitation of a person when:

23 (a) Considering the denial of a license by the board under Section 480; or

24 (b) Considering suspension or revocation of a license under Section 490.

25 Each board shall take into account all competent evidence of rehabilitation  
26 furnished by the applicant or licensee.

27 8. Section 493 of the Code states:

28 Notwithstanding any other provision of law, in a proceeding conducted by a  
board within the department pursuant to law to deny an application for a license or to  
suspend or revoke a license or otherwise take disciplinary action against a person who  
holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the  
licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order  
to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"  
and "registration."

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1 grounds for denial.

2 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
3 under consideration as grounds for denial which also could be considered as grounds  
4 for denial under Section 480 of the code.

5 (3) The time that has elapsed since commission of the act(s) or crime(s)  
6 referred to in subdivision (1) or (2).

7 (4) The extent to which the applicant has complied with any terms of parole,  
8 probation, restitution, or any other sanctions lawfully imposed against the applicant.

9 (5) Evidence, if any, of rehabilitation submitted by the applicant.

10 .....

### 11 FIRST CAUSE FOR DENIAL

#### 12 **(Disciplinary Action Against Psychiatric Technician License)**

13 12. Respondent's application is subject to denial under sections 480, subdivision  
14 (a)(3)(A) of the Code in that his psychiatric technician license was disciplined by the Board of  
15 Vocational Nursing and Psychiatric Technicians. This conduct would be a ground for discipline  
16 under section 2761(a)(4) of the Code for a registered nurse. The circumstances are as follows:

17 (a) In a disciplinary action entitled "In the Matter of the Accusation Against Erich C.  
18 Underhill," Case No. PT-2008-3097, OAH No. 2011030974, the Board of Vocational Nursing  
19 and Psychiatric Technicians (BVNPT), issued a decision, effective February 3, 2012, in which  
20 Respondent's Psychiatric Technician License No. PT 30256 was revoked. However, the  
21 revocation was stayed and Respondent's Psychiatric Technician License was suspended and  
22 remained suspended until he took and passed the licensure exam that was required by the BVNPT  
23 of new applicants. Respondent was ordered to take and pass the exam within two years of the  
24 effective date of the Decision. If Respondent failed to pass the licensure exam, the orders of  
25 suspension and revocation were to be vacated and Respondent's Psychiatric Technician License  
26 would be revoked. If Respondent passed the licensure exam within two years of the effective  
27 date of the decision, then the order of suspension is immediately vacated and Respondent's  
28 Psychiatric Technician License would be placed on three years probation with certain terms and  
conditions. As of October 22, 2012, Respondent has not passed the licensure exam, therefore, his  
Psychiatric Technician License is still suspended by the BVNPT.

(b) The circumstances that led to the disciplinary action by the BVNPT are that while employed as a psychiatric technician at R.J. Donovan Correctional Facility, Respondent engaged in unprofessional conduct by making grossly incorrect entries in inmate patient records, by engaging in several acts of gross negligence, and by failing to document patient care in accordance with professional standards. Specifically, Respondent failed to pass medications to his inmate patients on September 23, 2008; Respondent failed to properly complete the required daily summaries for his inmate patients and instead photocopied one signed summary and used the copies for his other patients (pre-charting); Respondent failed to administer a court-ordered medication to his inmate patient on January 13, 2009; Respondent administered a controlled substance medication to the wrong inmate patient on February 9, 2009; Respondent failed to pass medications to approximately half of his inmate patients on February 10, 2009 and documented on the Medication Administration Record (MAR) that the "medications were not available" even though they were; Respondent failed to sign the narcotic count sheet on March 23, 2009; Respondent failed to complete the proper documentation on his inmate patient's MARs on several days; and Respondent failed to complete the mental health round records and failed to report this to his supervisor on June 20, 2009, causing the mental health round records to remain incomplete.

#### **SECOND CAUSE FOR DENIAL**

##### **(May 13, 1998 Criminal Conviction for Disorderly Conduct: Soliciting Lewd Act)**

13. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The conviction would be a ground for discipline under section 2761(f) of the Code for a registered nurse. The circumstances are as follows:

(a) On or about May 13, 1998, in a criminal proceeding entitled *People of the State of California v. Erich Underhill*, in Westminster County Superior Court, case number 97WM09179, Respondent was convicted on his plea of guilty to Penal Code section 647(a), disorderly conduct: soliciting a lewd act, a misdemeanor. As a result of the conviction, Respondent was ordered to serve two years probation and to pay fines/fees. On or about November 9, 2004, Respondent's

conviction was expunged and dismissed pursuant to Penal Code section 1203.4.

**THIRD CAUSE FOR DENIAL**

**(False Statement of Fact Required to be Revealed in the Application for Licensure)**

14. Respondent's application is subject to denial under sections 480, subdivisions (a)(3)(A) and (c) of the Code in that Respondent made a false statement on his license application. This act would be a ground for discipline under section 2761(e) of the Code for a registered nurse. The circumstances are as follows:

a. On or about June 19, 2012, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in his Application for Licensure by Examination. A question on the application states:

Have you ever been convicted of **any** offense other than minor traffic violations? If yes, explain fully as described in the applicant instructions. Convictions must be reported even if they have been adjudicated, dismissed or expunged or if a diversion program has been completed under the Penal Code or Article 5 of the Vehicle Code. Traffic violations involving driving under the influence, injury to persons or providing false information must be reported. The definition of conviction includes a plea of nolo contendere (no contest), as well as pleas or verdicts of guilty. YOU MUST INCLUDE MISDEMEANOR AS WELL AS FELONY CONVICTIONS.

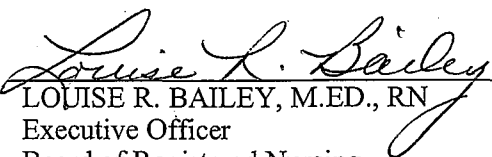
b. In response to this question, Respondent stated "No" and failed to declare his May 13, 1998 criminal conviction as detailed in paragraph 13, above.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Erich Underhill for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: NOVEMBER 5, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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